

Message Text

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TO SECSTATE WASHDC 6054

INFO AMCONSUL CHIANG MAI

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C O N F I D E N T I A L SECTION 1 OF 2 BANGKOK 13466

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SUBJECT: LEGISLATIVE CHANGES TO THE THAI DRAFT CONSTITUTION

CINCPAC FOR POLAD

REF A. BANGKOK 2540 B. BANGKOK 5670

SUMMARY: THE DRAFT CONSTITUTION WHICH HAS EMERGED FROM THE NATIONAL LEGISLATIVE ASSEMBLY'S (NLA) CONSTITUTION SCRUNTINY COMMITTEE (CSC) HAS SIGNIFICANT CHANGES FROM THE DOCUMENT THE CONSITUTION DRAFTING COMMITTEE (CDC) SUBMITTED TO THE LEGISLATURE. IF THE CDC'S DOCUMENT WAS A LAWYERS' AND POLITICAL SCIENCE PROFESSORS' VERSION, THE TEXT WHICH THE NLA IS NOW DEBATING IN ITS SECOND READING IS THE POLITICIANS' VERSION.

THE CSC'S DRAFT ANSWERED A NUMBER OF EARLY CRITICISMS OF THE CDC'S EFFORTS (BANGKOK 2673 AND 4547).
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THE POWERS OF THE ELECTED HOUSE ARE INCREASED AT THE EXPENSE OF THE APPOINTED SENATE. THE SENATE RETURNS TO THE LIMITED ROLE DESIGNED FOR IT IN THE 1949 AND 1968 CONSTITUTIONS. WHILE THE NEW DRAFT LIMITS HOUSE OBSTRUCTION OF

THE CRUCIAL BUDGETARY PROCESS, IT GIVES THE HOUSE GREATER CONTROLS OVER THE BUREAUCRACIES. FOR EXAMPLE, THE CSC HAS MADE PROVISION FOR A NATIONAL AUDIT COUNCIL WHICH REPORTS TO THE ELECTED HOUSE AND INVESTIGATES GOVERNMENT OPERATIONS, AND FOR PARLIAMENTARY APPROVAL OF APPOINTMENTS OF GOVERNMENT OFFICIALS AT CERTAIN LEVELS. T

THE CSC DELETED THE RESTRICTIONS ON THE PEOPLES' ELECTED REPRESENTATIVES, SUCH AS REQUIRING MEMBERSHIP IN A POLITICAL PARTY. THE CSC HAS ADOPTED THE SINGLE MEMBER DISTRICT.

THERE ARE NOW TIGHTER RESTRICTIONS ON THE EXERCISE OF MARTIAL LAW, AND THE PURVIEW OF MILITARY COURTS. COUP PLOTTERS WILL NOT BE FORGIVEN.

THE CSC DRAFT ALSO CALLS FOR STRONGER GOVERNMENT ACTION ON SOCIAL AND ECONOMIC ISSUES.

THE NLA BEGAN THE SECOND READING DEBATE AUGUST 15 AND IS DEMONSTRATING INDEPENDENCE FROM ITS OWN SCRUTINY COMMITTEE. IT RETURNED SOME CLAUSES TO THE ORIGINAL CDC'S WORDING. THE SECOND READING DEBATE PROMISES TO BE STIFF, EXTENSIVE AND WILL PROBABLY ELECTIONS TO JANUARY 1975. END SUMMARY.

1. AFTER THE DRAFT CONSTITUTION PASSED THE FIRST READING IT WENT TO A SPECIAL NATIONAL LEGISLATIVE ASSEMBLY (NLA) COMMITTEE FOR FURTHER SCRUTINY (REF B). THE NLA CONSTITUTION SCRUTINY COMMITTEE (CSC) SUBSTANTIALLY ALTERED THE DRAFT. BELOW WE ENUMERATE SOME OF THE MAJOR CSC CHANGES AND KEY THEM TO THE TEXT OF THE CONSTITUTION WHICH APPEARED AS A SUPPLEMENT TO THE 28 FEBRUARY 1974 EDITION OF THE "BANGKOK POST".

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2. THE SENATE HAS REDUCED POWERS IN THE CSC VERSION OF THE DRAFT CONSTITUTION. THE SENATE IS STILL AN APPOINTED BODY OF 100, BUT THE CSC RETURNED TO THE PROVISIONS OF THE 1968 CONSTITUTION WHERE THE KING DIRECTLY APPOINTS THE SENATE. NEW EMENDATIONS INCLUDE SETTING THE MINIMUM AGE FOR SENATORS AT 35 YEARS AND HAVING THE PRESIDENT OF THE PRIVY COUNCIL COUNTERSIGN THE ROYAL SENATORIAL APPOINTMENTS. THE DEMOTION OF THE SENATE IS CHARACTERIZED BY ARTICLE 89 WHICH, FOR THE PURPOSE OF JOINT SESSIONS, MAKES THE SPEAKER OF THE HOUSE THE SPEAKER OF THE NATIONAL LEGISLATIVE ASSEMBLY WHILE THE SPEAKER OF THE SENATE IS THE DEPUTY. DELETED ARE THE SENATE'S POWERS TO CALL FOR A GENERAL DEBATE (ARTICLE 158), VOTE OF NO-CONFIDENCE (ARTICLE 159),

AND ORIGINATE A CONSTITUTIONAL AMENDMENT (ARTICLE 218). THE HOUSE CAN APPROVE A ROYAL EMERGENCY DECREE EVEN IF THE SENATE OBJECTS (ARTICLE 180). THE CSC STRUCK THE REQUIREMENT FOR JOINT SESSIONS TO DEBATE BUDGETARY BILLS. THE TERMS OF OFFICE FOR SENATORS IS INCREASED TO SIX YEARS. AT THE END OF THE FIRST THREE YEARS LOTS ARE DRAWN TO DETERMINE WHICH 50 SENATORS' TERMS EXPIRE, ALTHOUGH THE KING HAS THE RIGHT TO REAPPOINT THEM TO NEXT SIX YEAR TERMS (ARTICLE 108).

3. THE HOUSE OF REPRESENTATIVES IS BASICALLY AS IN THE ORIGINAL DRAFT. ARTICLE III IS RETAINED WHICH CALLS FOR A HOUSE OF BETWEEN 240 AND 300 MEMBERS. THE CSC, LIKE THE CDC, LEFT THE EXACT NUMBER OF REPRESENTATIVES UP TO THE YET TO BE INTRODUCED ELECTIONS LAW. THE MAJOR REFORM THE CSC INCORPORATED WAS ITS APPROVAL OF SINGLE MEMBER ELECTORAL DISTRICT (ARTICLE 112).

4. THE CSC, LIKE THE CDC, STRUGGLED WITH THE PRESUMED PROBLEM OF INSTABILITY WITHIN A MULTI-PARTY PARLIAMENT. THE CDC TRIED TO STONEWALL OBSTREPEROUS PARLIAMENTARIANS BY REQUIRING THAT THEY BE MEMBERS OF POLITICAL PARTIES AND BY PERMITTING THEIR PEERS TO PETITION FOR THEIR REMOVAL FOR UNBECOMING BEHAVIOR. THE CSC DELETED ALL THESE REQUIREMENTS BUT BEEFED UP ARTICLE 127 SO THAT THE KING APPOINTS AN OPPOSITION LEADER. THE OPPOSITION THUS WOULD HAVE LEGITIMACY AND RESPONSIBILITY. THE OPPOSITION LEADER WILL BE THE HEAD OF A POLITICAL PARTY NOT REPRESENTED IN CONFIDENTIAL

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THE CABINET AND WHOSE MEMBERS COMPRISE ONE-FIFTH OF THE HOUSE. THE CSC ALSO ALTERED ALL THE IMPORTANT PERCENTAGES FOR QUORUMS AND VOTES. ACCORDING TO NEW ARTICLE 134 A QUORUM IS ONE-THIRD, DOWN FROM ONE-HALF. SECRET SESSIONS OF ONE OR BOTH HOUSES REQUIRE THE APPROVAL OF ONE-FOURTH OF ONE OR BOTH HOUSES, INSTEAD OF 25 MEMBERS (ARTICLE 160). ARTICLE 218 REDUCES THE VOTE REQUIRED TO AMEND THE CONSTITUTION FROM TWO-THIRDS OF BOTH HOUSES TO ONE-HALF.

5. THE CABINET--THE CSC MADE THE PRIME MINISTER RESPONSIBLE TO THE HOUSE. THE ORIGINAL DRAFT LEFT THE KING FREE TO SELECT THE PRIME MINISTER FROM EITHER THE APPOINTED SENATE OR THE ELECTED HOUSE. ARTICLE 168 EXPLICITLY STATES THAT THE PRIME MINISTER MUST BE AN ELECTED REPRESENTATIVE. FURTHERMORE, AT LEAST HALF OF THE CABINET MUST DERIVE FROM THE HOUSE AND/OR THE SENATE.

6. BUDGETARY PROCESS-PARLIAMENTARY DELIBERATION OVER THE NATIONAL BUDGET IS A CRUCIAL POLITICAL QUESTION. THE CSC HAS SIGNIFICANTLY LIMITED PARLIAMENTARY HARASSMENT OF BUDGET BILLS IN ARTICLE 154 BY SAYING THAT THE HOUSE MUST TAKE ACTION WITHIN 90 DAYS AND THE SENATE 50 DAYS

AFTER THE BILLS SUBMISSION. IF THE HOUSE HAS NOT ACTED ON A BUDGETARY BILL WITHIN 90 DAYS, THE CONSTITUTION PRESUMES THAT THE HOUSE ENDORSES THE MEASURE AND IT GOES TO THE SENATE.

THE MONARCHY

7. ROYAL PRIVILEGES ARE SLIGHTLY ALTERED IN ACCORDANCE WITH EARLIER CRITICISMS ABOUT DRAGGING THE MONARCHY INTO POLITICS. THE CSC COMPLETELY DELETED ARTICLE 94 GIVING THE KING THE AUTHORITY TO REFER TO THE PEOPLE IN A NATIONAL REFERENDUM A MEASURE THAT THE NLA HAS PASSED, BUT WHICH THE KING DISAPPROVES. THE CSC HAS INSERTED NEW WORKING WHICH CLARIFIES THE METHOD OF AMENDING THE 1924 LAW ON ROYAL SUCCESSION (ARTICLE 24).

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NEW PROVISIONS

8. IN AN ATTEMPT TO STRENGTHEN THE HAND OF THE PARLIAMENT AGAINST BUREAUCRACIES, THE CSC REWROTE CHAPTER 9 TO ESTABLISH A NATIONAL AUDIT COUNCIL (NAC) WHOSE DUTIES APPEAR SIMILAR TO THE UNITED STATES CONGRESSIONAL GOVERNMENT ACCOUNTING OFFICE. THE NAC OVERSEES GOVERNMENT EXPENDITURES AND REPORTS TO THE ASSEMBLY. IN A REVOLUTIONARY POWER GRAB, THE CSC ADDED ARTICLES TO CHAPTER 9 WHICH PLACE CERTAIN GOVERNMENT OFFICIALS UNDER THE CONTROL OF THE ASSEMBLY. IT ALSO REQUIRES THAT THE PRESIDENT OF THE ASSEMBLY (I.E.,

THE SPEAKER OF THE HOUSE) COUNTERSIGNS ROYAL APPOINTMENTS AT THE UNDER-SECRETARY AND DIRECTOR-GENERAL LEVELS (ARTICLE 204(C)).

9. THE CSC ALSO ESTABLISHED A NEW OFFICE ENTITLED "INSPECTOR-GENERAL OF THE NATIONAL LEGISLATIVE ASSEMBLY". WHILE ITS DUTIES SEEM SIMILAR TO THE NATIONAL AUDIT COUNCIL, THE INSPECTOR GENERAL RESPONDS TO REQUESTS FROM THE SENATE
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OR HOUSE COMMITTEE OR REQUESTS FROM INDIVIDUAL MEMBERS. THE NEW ARTICLES ALSO PROVIDE THE INSPECTOR-GENERAL WITH A STAFF. THE CSC DELETED THE ARTICLES WHICH APPEARED TO STRENGTHEN ECONOMIC PLANNING UNDER THE NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT BOARD (NESDB), BUT STRENGTHENED THE SUGGESTION TOWARD CONCERTED PLANNING IN ARTICLE 75. RECURRENT ISSUES

10. THE CSC ALSO REWROTE A NUMBER OF PROVISIONS IN ORDER TO PROTECT THE CONSTITUTION AND THE KINGDOM FROM THE THAI MILITARY. IT ADDED A NEW CLAUSE TO ARTICLE 3 WHICH PROHIBITS GRANTING AN AMNESTY TO PERSONS WHO ABOLISH THE MONARCHY OR THIS CONSTITUTION. THIS IS A BREAK WITH THAI PRACTICE DATING BACK TO 1932 WHICH ALLOWS THE FACE-SAVING DEVICE OF THE SUCCESSFUL COUP PLOTTERS GRANTING THEMSELVES AMNESTY. THE CSC HAS ALSO TIGHTENED THE RESTRICTIONS ON THE EXERCISE OF MARTIAL LAW. ACCORDING TO THE NEW VERSION OF ARTICLE 183, MARTIAL LAW CAN ONLY BE IN EFFECT FOR THIRTY DAYS; AFTER THAT LIMIT THE GOVERNMENT MUST RECEIVE ASSEMBLY APPROVAL. FURTHERMORE, THE CSC VERSION OF THE CONSTITUTIONAL LIMITS THE PURVIEW OF MILITARY COURTS TO CASES INVOLVING MILITARY REGULATIONS AND DUTIES (ARTICLE 199).

11. CONSTITUTIONAL REFERENDUM--DESPITE THE DEFEAT IN THE ASSEMBLY OF DR. PUAI UNPHAKON'S MOTION FOR A PUBLIC REFERENDUM ON THE DRAFT CONSTITUTION (BANGKOK 6215), THE CSC EXPANDED A FEW WORDS IN ARTICLE 220, WHICH PROVIDED FOR SUCH A REFERENDUM AT THE BEHEST OF THE KING, INTO A DETAILED DESCRIPTION OF HOW THAT REFERENDUM SHOULD BE ADMINISTERED. WITHIN 90 DAYS OF BEING PRESENTED WITH THE NLA APPROVED CONSTITUTION, THE KING CAN ISSUE A DECREE CALLING FOR A REFERENDUM WHICH IS TO TAKE PLACE WITHIN AN ADDITIONAL 90-DAY PERIOD. THE REFERENDUM ON THE CONSTITUTION PASSES WITH A SIMPLE MAJORITY VOTE. IF IT DOES NOT PASS THE DRAFT LAPSES. IT IS SOMEWHAT OF A MYSTERY WHY THE CSC DID NOT DROP ARTICLE 220 IN LIGHT OF THE DEFEAT OF A SIMILAR MEASURE IN THE NLA AND THE PRESSURE BUILDING UP TO PROMULGATE THE CONSTITUTION AS QUICKLY AS POSSIBLE. INVOKING ARTICLE 220 WOULD SIGNIFICANTLY DELAY THE ELECTIONS.
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LEGAL PROTESTIONS AND SOCIAL WELFARE ISSUES

1. WOMEN'S LIBERATION-EQUAL RIGHTS FOR THE SEXES GETS VAUDEVILLE TREATMENT IN THE CSC'S VERSION. ADDED TO ARTICLE 28 IS THE SENTENCE THAT "MEN AND WOMEN HAVE EQUAL RIGHTS". BURIED AT THE END OF THE CONSITUTION, HOWEVER, IS ARTICLE 223 (A) WHICH SAYS THAT ARTICLE 28 IS IN-OPERATIVE IF NO ENACTING LEGISLATION HAS BEEN PASSED WITHIN TWO YEARS.

13. WHILE BOTH CDC AND THE CSC WROTE POLITICALLY CONSERVATIVE DOCUMENTS, EACH HAS MADE THE LEGAL PROTECTIONS AND SOCIAL WELFARE SECTIONS INCREASINGLY LIBERAL. THE CSC CONSIDERABLY BROADENED THE RIGHTS OF THE THAI PUBLIC TO FORM PRESSURE GROUPS IN A REWRITTEN ARTICLE 43 WHICH VIRTUALLY LEGATIZED LABOR UNIONS. IT ALSO PLACED

STRONGER EMPHASIS ON THE GOVERNMENT'S RESPONSIBILITIES IN THE AREAS OF AGRICULTURAL PROMOTION, ECONOMIC BETTERMENT AND POPULATION CONTROL. A REWRITTEN ARTICLE 83 CALLS FOR ADEQUATE COMPLENSATION FOR LABOR AND AN INDISTRIAL SOCIAL SECURITY PROGRAM. THE NEW DRAFT CONSITUTION INCLUDES STRONGER ENVIRONMENTALIST PROVISIONS.

THE SECOND READING DEBATE

14. BEFORE MOVING TO THE SECOND READING OF THE DRAFT CONSITUTION, THE NLA VOTED TO EXTEND ITS DELIBERATIONS TO THREE DAYS A WEEK AS A METHOD OF ACCELERATING FINAL APPROVAL. THERE WAS LITTLE SUPPORT IN THE NLA FOR PRIME MINISTER SANYA THAMMASAK'S PREFERENCE FOR CONTINUOUS DEBATE UNTIL FINAL PASSAGE. AGAIN, THE NLA MAINTAINED ITS INDEPENDENCE IN THE FACE OF A CABINET LEVEL PROPOSAL. AFTER THREE DAYS OF DEBATE THE NLA HAS PASSED 41 OF THE 224 ARTICLES. AT THAT RATE THE SECOND READING WILL TAKE SIX WEEKS AND PUSH ELECTIONS WELL INTO JANUARY 1975. THE NLA MAY TAKE LONGER, HOWEVER, BECAUSE THEY HAVE NOT YET DEBATED THE REALLY CRUCIAL ARTICLES DEALING WITH THE POWERS OF PARLIAMENT AND THE WHOLE ELECTORAL SYSTEM.
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15. DURING THE FIRST THREE DAYS OF THE SECOND READING DEBAYE (AUSUG 15-18) THE NLA MADE A NUMBER OF CHANGES IN THE CSC'S VERSION OF THE DRAFT, SOME OF WHICH RETURNED THE VERBIAGE TO THE CDC'S VERSION. WHILE FEW CHANGES INVOLVED MAJOR POLITICAL ISSUES, THE NLA DID APPROVE A FLOOR AMENDMENT ALLOWING PRINCESSES TO ASCEND THE THRONE, UPON PARLIAMENTARY APPROVAL. THE

ARTICLE GUARANTEEING EQUAL RIGHTS TO THE SEXES DREW EXTENDED DEBATE, BUT THE NLA FINALLY ACCEPTED THE CSC'S VERSION. ONE OF THE LONGEST DEBATES FOCUSED ON ARTICLE 36 WHICH GUARANTEES COMPENSATION TO AN INDIVIDUAL ILLEGALLY ARRESTED AND DETAINED BY THE AUTHORITIES. SUCH EXTENDED DEBATE ILLUSTRATES THAT THE NLA WILL NOT QUICKLY PASS A DRAFT CONSTITUTION WHICH DELVES INTO SUCH PARTICULARIST MINUTIAE.

COMMENT

16. THE CSC'S VERSION OF THE DRAFT CONSTITUTION APPEARS TO BE A MUCH MORE FORWARD LOOKING DOCUMENT IN THE ECONOMIC AND SOCIAL JUSTICE AREAS THAN THE ORIGINAL DRAFT. IT PROPOSES A GOVERNMENT STRUCTURE THAT IS STRONGLY REMINISCENT OF THE 1949 AND 1968 PREDECESSORS. THE CSC DIMINISHED THE STRENGTH OF THE APPOINTED SENATE AND INCLUDED ARTICLES AGAINST THE INDIVIDUAL PARLIAMENTARIANS WHICH SMACKED OF RETURNING THAI POLITICS TO COVERT TUTELAGE. IN THE CSC VERSION NOT ONLY WILL THE PARLIAMENTARIANS BE UNENCUMBERED, BUT THE LOWER HOUSE WILL HAVE INCREASED POWERS OVER THE BUREAUCRACIES. THE CSC SEEMS TO ARGUE THAT THE FAULT IS NOT IN THE PARLIAMENTARIANS, BUT THE LACK OF PARLIAMENTARY CONTROL OVER THE GOVERNMENT.

17. IT IS NOT CLEAR YET WHAT THE NLA'S THINKING IS ON THE CRUCIAL ASPECTS OF THE POLITICAL SYSTEM WHICH THIS CONSTITUTION IS TRYING TO BUILD. THE SECOND READING WILL NOT BE SMOOTH SAILING. IT WILL EXPOSE THE NLA MEMBERS AND THE THAI PUBLIC TO SOME OF THE MOST OPEN AND HARD FOUGHT POLITICS THAILAND HAS EXPERIENCED. IT WILL DIVULGE THE LACK OF POLITICAL CONSENSUS IN THAILAND AS TO HOW A REPRESENTATIVE SYSTEM SHOULD BE STRUCTURED AND FUNCTION.

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THE LACK OF A CONSENSUS IS ILLUSTRATED IN THE CSC'S CHANGES TO THE ORIGINAL DRAFT AND THE NLA'S CHANGES OF THE CSC VERSION, HOWEVER MINOR.

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